

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

COSTS AND FUNDING COMMITTEE

30 September 2024, at 4.15 PM

Judges Conference Room, L+2, Parliament House, Edinburgh

MINUTES

Members Present: Lord Harrower (*Chair*)
Ian Dickson
Susan Black
Laura Blane (*via WebEx*)
Robin Macpherson
Sheriff Jillian Martin-Brown
Alan Rogerson
Sheriff Varney

In attendance: David Smith (*via WebEx*)
Emma Scott (*via WebEx*)

SCJC Support: Craig McCorkindale
Jessica Flynn
Sarah Jane McNicol

Apologies: Susan Ower
Stewart Mullan
Craig Anderson
Chris Fyffe

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted the apologies tendered.
2. **The Committee agreed to publish: papers 2.1, 3.1A & 3.2A**
3. **The Committee agreed not to publish: papers 3.1, 3.1B, 3.2, 3.3, 3.3A & 3.3B**

Item 2: Items by correspondence (Paper 2.1)

4. **The Committee noted the content of paper 2.1.**

Item 3: Work Programme

Item 3.1 - Extending the availability of PEOs

5. In May 2022 the Committee agreed in principle to extend the use of PEOs to the sheriff courts, subject to the secretariat undertaking research on the appropriate caseload to be included and the likely business impacts on the courts. The Committee welcomed the results of the research report (***Paper 3.1A***) that has now been provided which covers the key drivers of litigation across the 28 cases where a motion for a PEO has been considered by the court.
6. **The Committee instructed the secretariat to prepare a press release and publish paper 3.1A via the publications tab on the SCJC website.**
7. Access to information is one of the three key pillars of the Aarhus Convention and that actively supports public participation in environmental decision making. At present PEOs are only available in the Court of Session for those seeking to enforce their rights of access to environmental information. The conclusion reached was that the same capability to reinforce those rights should be available across the other courts.
8. Members discussed the potential options for extending the use of PEOs to the sheriff court, and the likely impacts on court business. The conclusion reached was that an extension would be appropriate with regards to the proceedings initiated under the Environmental Protection Act 1990.
9. With regard to the Court of Session; members noted the emerging caseload arising under the new Group Procedure. The current diesel emissions cases were discussed, including the way in which the financial dimension of those cases would be considered under that procedure. The conclusion reached was that is appropriate to consult on whether to extend PEOs to Group Procedure, which will then enable a fully informed decision to be made.
10. **The Committee agreed to instruct the preparation of draft rules for the purposes of running a Public Consultation during 2024/25 on:**
- **Extending PEOs to the sheriff courts and Sheriff Appeal Court for:**
 - **Proceedings under the Environmental Protection Act 1990;**
 - **Proceedings where access to environmental information has been requested under the Environmental Information (Scotland)**

Regulations 2004 and the Environmental Assessment (Scotland) Act 2005; and

- **Amending the existing PEO Rules in the Court of Session to include proceedings initiated under Group Procedure.**

Item 3.2 - Update on the Aarhus Concerns for Scotland

11. The Committee discussed the October 2024 update the UK member state is due to provide on its plan of action, which is being collated by DEFRA.
12. As background for that update **Paper 3.2A** is intended to convey an SCJC perspective on each concern raised. Members were content with the positions narrated. Subject to minor updates to reflect the decision taken on extension of PEOs to the sheriff court, this should be a public paper.
13. **The Committee agreed paper 3.2A is to be marked as a public paper.**

Item 3.3 - Reduction of Inclusive Charges

14. The Committee noted that the interpretation of rule 3.7 of the Taxation of Judicial Expenses Rules 2019 had been commented on in a recent unreported court opinion, which is surprising given that those 25% and 50% reductions have been in place since 1976 when the summary cause rules were first introduced
15. In making their arguments, the pursuer's agent appears to conflate a) certain elements of the *capped expenses regime* provided by the Scottish Ministers under section 81 of the Courts Reform (Scotland) Act 2022 with b) the taxation rules covering *inclusive charges* as regulated by the court under section 104 of the same Act. In other word parts of section 81 are taken out of context which does beg the question of whether some confusion may arise from the brevity of the heading used for section 81. There was also a recognition that the heading of rules 3.7 could better convey "what it says on the tin".
16. **To reduce potential confusion the Committee agreed:**
 - **To amend the heading of rule 3.7 from "*Simple Procedure*" to "*Reduction of Inclusive Charges*"; and**
 - **To suggest to the Scottish Government that the heading of section 81 of the 2014 Act could be extended from "*Expenses in Simple Procedure*" to "*Limits on Expenses in Simple Procedure*" when practicable.**

17. The points discussed within that unreported court opinion have been the subject of ongoing debate. The conclusion reached was that this policy issue does warrant further enquiries being made a) to clarify the original policy intent behind the reductions and b) how those reductions fit within an inquisitorial procedure. Those enquiries should include a discussion with the President of the SAC.
- 18. The Committee instructed the secretariat to make further checks on the way in which rule 3.7 is being interpreted and report back to members.**

Item 4: AOB

19. There was no other business raised.

Item 5: Date of next meeting

20. To be scheduled

**Secretariat to the Scottish Civil Justice Council
September 2024**